



IT IS ORDERED as set forth below:

Date: February 18, 2010

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

IN RE:	:	Chapter 13
	:	
BOBBY EUGENE AMOS and	:	Case No. 10-40114
MELISSA DARLENE AMOS,	:	
	:	
Debtors.	:	
_____	:	
	:	
BOBBY EUGENE AMOS and	:	Contested Matter --
MELISSA DARLENE AMOS,	:	Motion for Contempt
	:	
Movants,	:	
	:	
vs.	:	
	:	
ROSWELL AUTO BROKERS, INC., and	:	
JOHN J. GUARINE, Personally,	:	
	:	
Respondents.	:	
_____	:	

ORDER DIRECTING TURNOVER OF VEHICLE

Bobby Eugene Amos and Melissa Darlene Amos, the Debtors in this Chapter 13 case,

filed a Motion for Contempt against Roswell Auto Brokers, Inc. (“Roswell Auto”) and John J. Guarine, personally, in which they seek an Order finding Roswell Auto and John J. Guarine to be in willful contempt of this Court because of the repossession and continued retention of a 2002 Dodge Stratus automobile in violation of the automatic stay of 11 U.S.C. § 362(a). The motion was duly served on Roswell Auto on January 21, 2010, together with notice of a hearing on the motion for 10 o’clock a.m. on February 17, 2010. No one appeared at the hearing on behalf of Roswell Auto or Mr. Guarine.

Based on the proffer of facts at the hearing and the undisputed allegations of the motion, the Court makes the following findings of fact: (1) Debtors filed this Chapter 13 case on January 12, 2010; (2) Debtors own a 2002 Dodge Stratus in which Roswell Auto claims a security interest to secure a debt owed to it; (3) Debtors called Roswell Auto and informed its representative of the filing of this case; (4) Roswell Auto repossessed the 2002 Dodge Stratus on January 19, 2010; (5) Mr. Guarino received a demand by telephone for return of the 2002 Dodge Stratus; and (6) The 2002 Dodge Stratus has not been returned to the Debtors. These facts establish that, with knowledge of the filing of this bankruptcy case and after being advised of the automatic stay of 11 U.S.C. § 362(a), Roswell Auto obtained possession of the 2002 Dodge Stratus and has continued in possession of it.

Based on the foregoing findings of fact, the Court concludes that Roswell Auto has violated, and is continuing to violate, the automatic stay of 11 U.S.C. § 362(a) with knowledge of its existence. Because violation of the automatic stay constitutes contempt of this Court, the Court further concludes that Roswell Auto is in willful contempt of this Court. The Court reserves ruling on the extent, if any, to which Mr. Guarine is personally in contempt of this Court

and, if so, whether such contempt is willful. In this regard, the Court observes that an individual who directs or is otherwise responsible for the actions of a corporate or other entity that violates the automatic stay may be found to be in contempt and subject to appropriate sanctions for directing, authorizing, or controlling the violation.

Under 11 U.S.C. § 362(k), an individual injured by an violation of the automatic stay is entitled to recover actual damages, including costs and attorneys' fees, as well as punitive damages in appropriate circumstances. The Court reserves ruling on the amount, if any, of actual and punitive damages to which the Debtors may be entitled.

Pending further proceedings with regard to the issues on which the Court is reserving ruling, the Court will order Roswell Auto to turn the 2002 Dodge Stratus over to the Debtors. In order to compel compliance with this Order, the Court will impose sanctions, as set forth below, if Roswell Auto fails to comply with this Order. The Court grants such relief as authorized under 11 U.S.C. § 105(a) in order to compel compliance with the provisions of 11 U.S.C. § 362(a).

It is, therefore, hereby **ORDERED and ADJUDGED** as follows:

1. Roswell Auto Brokers, Inc., all of its officers, agents, servants, employees, attorneys, and other persons who are in active concert or participation with any of the foregoing, are hereby ordered to deliver possession of the 2002 Dodge Stratus to the Debtors within 24 hours from the date of receipt of actual notice of this Order by personal service or otherwise.

2. If Roswell Auto Brokers, Inc., fails to deliver possession of the vehicle to the Debtors within said time, Roswell Auto Brokers, Inc., and any of its officers, agents, servants, employees, attorneys, or other persons in active concert or participation with any of the foregoing who has

authority or responsibility for causing Roswell Auto Brokers, Inc., to comply with this Order and notice of this Order, shall be jointly and severally liable to the Debtors for the following sums: (a) \$100 per day for each day beyond the 24-hour period that the vehicle has not been returned; (b) an additional \$100 per day (i.e., a total of \$200 per day) for each day beyond three days after the 24-hour period that the vehicle has not been returned; and (c) an additional \$300 per day (i.e., a total of \$500 per day) for each day beyond six days after the 24-hour period the vehicle has not been returned. The Court orders these payments in order to compel compliance with the Court's order. Any amounts payable pursuant to this paragraph shall be in addition to any amounts that the Debtors may recover pursuant to 11 U.S.C. § 362(k).

3. The Debtors may seek actual and punitive damages (including costs and attorney's fees) as 11 U.S.C. § 362(k) authorizes by filing a motion against Roswell Auto and other parties alleged to be responsible for such damages, including Mr. Guarine, if appropriate. The motion shall specify the damages to which they contend they are entitled and, in the case of Mr. Guarine or other parties, the basis on which any of them are personally liable for violation of the automatic stay. Upon the filing of such a motion, the Court will schedule a status conference to consider appropriate procedures for hearing and determining the motion.

End of Order

Distribution List

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